



# **Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse: Issues Paper 7**

## **Statutory Victims Of Crime Compensation Schemes**

**“I’ll be dead before I get justice and it’s  
not fair.” Val Noble, 84, Vic**

**Redress:** Remedy or set right (an undesirable or unfair situation). (Oxford online dictionary)

**Compensation:** Something, typically money, awarded to someone in recognition of loss, suffering, or injury. (Oxford online dictionary)

**Reparation:** the action of making amends for a wrong one has done, by providing payment or other assistance to those who have been wronged. (Oxford online dictionary)

Care Leavers Australia Network (CLAN) is a national, independent, peak membership body which represents and advocates for people who were raised in Australia’s orphanages, Children’s Homes, foster care and other institutions. CLAN's objective is to raise community awareness of our issues, and to campaign for government assistance to redress them. Being raised without your family has lifelong implications that require lifelong support services. CLAN can provide information, understanding and emotional support and are campaigning for a national compensation scheme.

## **Introduction**

CLAN would like to take this opportunity to comment on the Statutory Victims of Crime Compensation Schemes Issues Paper. CLAN's response has been informed by our experience with Care Leavers over the last fourteen years. CLAN has members nationwide, who have access to different forms of redress and compensation dependent on where they grew up. Since, NSW and VIC have no redress scheme or ex gratia payment specifically geared towards Care Leavers, the majority of Victims of Crime Compensation cases CLAN hears about are from these states. It must be said that no amount of redress will ever compensate the crimes committed against defenceless children who had no one to turn to, nor will it change what happened to them. Redress however is necessary to start righting the wrongs that Care Leavers were subjected to. It is and always has been CLAN's position that the only way to ensure justice and equity for all Australian Care Leavers is to provide a National Independent Redress Scheme (NIRS) for ALL Australian Care Leavers. It is CLAN's recommendation that funds be directed to a national independent reparations and compensation scheme facilitated by a body completely independent of any church, charity or government. CLAN hopes that by reading our submission and understanding the challenges Care Leavers face with Victims of Crime Schemes you may gain a better understanding as to why we feel this recommendation is necessary.

## **Advantages of Statutory Victims of Crime Schemes**

The advantages of Victims of Crime Schemes are minimal when compared to the disadvantages. There are some advantages however when compared with civil litigation or even Professional Standards Units. Firstly, compared to civil litigation Care Leavers do not have to face their abuser, or representatives of their abuser as in professional standards unit schemes.

Similarly, and for this reason when considering professional standards units, the process is much more impartial and transparent. When professional standards units are involved, the motives behind offering compensation are questioned, as are the methods they utilise in doing this.

Furthermore, Victims Services in most states will offer counselling as part of the Victims Compensation Scheme which is beneficial for emotional support as well as because it is independent of past 'care' provider organisations.

Going through a Victims of Crime Scheme also saves Care Leavers from having to go through a long and tedious court process. They do not have to show up to court or mediation for multiple hearings and they do not have to be interrogated and cross examined which will retraumatise them. Lastly, most Victims of Crime Schemes operate without the need of a solicitor. This also assists Care Leavers to keep costs down and not have to pay exorbitant fees from their compensation.

## **Disadvantages of Statutory Victims of Crime Schemes**

There are a multitude of disadvantages with Statutory Victims of Crime Schemes. These disadvantages far outweigh any positives of the schemes across the states. CLAN would also like to note that whilst discussing the disadvantages of Victims of Crime Schemes, as we believe that all

forms of child abuse should be compensated, we will be discussing the disadvantages in relation to other forms of abuse also.

Most importantly, when considering Care Leavers and survivors of institutional child abuse it is vital to remember that most of these crimes will be historic in nature. Victims of Crime schemes are not geared for historical crimes in the slightest. All state schemes have time limitations for bringing forward a claim, and even though some schemes have the mechanism to allow for an extension of time, this is subjective and up to the whims of whoever is making that decision on the day. In the ACT, crimes before 1983 are not considered and in TAS crimes before 1976 are not considered, thereby eliminating the majority of Care Leavers from applying for compensation. Schemes such as WA and SA (exclusive of the ex gratia payment for sexual abuse in state care), utilise a sliding scale of compensation so that crimes before 1971 and 1969 will not be compensated. Furthermore the amounts of compensation that they do provide for those years are \$2000 and \$1000 respectively. These meagre amounts hardly make going through the Victims of Crime Schemes worthwhile. In NSW, while there is no time limit to apply for Victims Compensation for child sexual assault, if a claim is not made within two years from the incident then certain types of compensation are not made available to victims. This includes financial assistance for immediate needs and for economic loss. In VIC, QLD, and NT there is no special category for child abuse or child sexual assault, and these crimes are treated as any other would be with the same time limits applying barring an extension being granted.

Secondly, even though it is called Victims Compensation, in the NSW, VIC, and QLD schemes, it is less about compensating victims and more about reimbursing or covering costs. The actual recognition payment portion of the schemes are minimal, and for many Care Leavers who bring forward historical abuse claims, this is one of the only forms of compensation through the schemes they may be entitled to. When comparing the recognition payments that these Victims of Crime schemes give with civil litigation, it is clear that there is a huge discrepancy between what different systems believe victims of these crimes are worth.

Another barrier for many Care Leavers with these schemes are the fact that some require the crime to be reported to the police, and in VIC if the crime was committed before July 2000, the offender has to have even been charged, before special financial assistance is considered. Even the other schemes where it is not a bare necessity for the crime to be reported, claimants are looked down upon for not reporting the crime and have to provide a detailed explanation why. For many Care Leavers this can be an extremely difficult process, and for many provokes feelings of guilt and self blame that they were responsible for their abuse. One CLAN member who applied to the NSW Victims Compensation Scheme was told one of the reasons she was not awarded any compensation was the fact it took her so long to disclose her abuse to anyone and she should have spoken about it earlier. These sorts of schemes have no right to be so presumptuous, nor to retraumatise those who have already endured unimaginable abuse. It is clear from comments such as these that these schemes lack an understanding of the psychological processes of child abuse victims as well as the very real limitations placed on children who were in institutional care that prevented them from reporting or disclosing their abuse. The fact is that many Care Leavers do not trust the police or those in authority as these were the same people that let them down all those years ago. For many, reporting their abuse to the police is not only a difficult thing to do, but in many cases has proven to be a pointless exercise, serving to do nothing but retraumatise them.

Similarly, some schemes also require doctors reports or letters from government agencies. As mentioned above, many Care Leavers do not and will not trust those in authority. They let them down before, and they are fearful they will let them down again. Furthermore, for many Care Leavers doctors either were perpetrators themselves or were complicit in the abuse that was being perpetrated on them. Many Care Leavers also refuse to see doctors due to their physical or sexual abuse and their fear of being touched or examined by someone. This makes the requirement of some Victims of Crime schemes to have these sorts of reports and letters unreachable for many Care Leavers, which in turn prevents them from obtaining the maximum if any compensation through these schemes.

In NSW, the new Victims Rights and Support Act 2013 has changed the way in which the scheme operates. Firstly, it does not allow those who were physically abused as children an extended time limit, as it does for sexual abuse. Secondly it does not recognised psychological harm incurred by individuals. That is, the levels at which a recognition payment is awarded is based solely on the type of act perpetrated with no regard to the actual effects the violence has had on the individual. This does not allow for the differences in individuals reactions to be a factor in deciding how much compensation they are entitled to. It is always important to understand that each person responds to things differently, and whilst one person may be more able to move on after their abuse, someone such as a Care Leaver who had no self -esteem or support system to begin with, may require more intensive support and services throughout their life. Another issue which has arisen with the introduction of the new Victims of Crime scheme in NSW, is the fact it has been implemented retrospectively. CLAN have had some members waiting since 2008 to have their case heard, and only have been able to have it assessed after the laws have changed. This has been quite convenient for the state government as the new scheme does not allow for as much compensation to be awarded as the old scheme did. Furthermore, the new scheme as previously mentioned does not allow for extended time for child physical abuse which leaves many Care Leavers without any form of justice for the crimes committed against them.

Unfortunately the transitional arrangements that have also been created under the new scheme have failed miserably to provide any sort of fair or just outcome for Care Leavers. One CLAN member who applied for compensation in 2011 and had his application dismissed, applied for a review of his case with the administrative tribunal. The Administrative Tribunal was satisfied that he was the victim of a violent act and therefore was eligible for compensation between \$30 000 and \$50 000. However, due to an authorised report writer (which is not being used in the new system) attributing an arbitrary %15 of his loss/effects on his life to the violence he endured at Mt Penang, the Administrative Tribunal decided he was only entitled to \$4500. Since \$4500 is below the minimum compensable threshold of \$7500 the Administrative Tribunal awarded him nothing. The absolute ridiculousness of this situation is beyond words.

Another NSW Care Leaver has been told that because she applied under the old act she is now dealing with a special transition period of the new act. This has effectively left her in no mans land, meaning she is not eligible for the old amounts of compensation under the old Act, but is also not eligible for some of the benefits under the new Act. It seems that the decision to apply the new Act retrospectively, but to have transitional arrangements have penalised those unlucky enough to have been failed by the old system which left them waiting for years with no decision or finalisation of their claim. The length of the time the old NSW Victims of crime scheme took to sort out claims is

not the fault of those victims claiming for compensation, nevertheless they are the ones being penalised under the new scheme.

Another issue which we have been made aware of with our dealings with the NSW Victims of Crime Compensation scheme is the inconsistency between those adjudicating over claims. It seems to be up to the subjectivities of whoever is assessing that particular day, which has been evidenced in various Care Leaver claims. It also seems dependent on who the assessor is as to what level of evidence is necessary for the claim. As the Royal Commission would well be aware, there is little evidence for many Care Leavers to support their claims, and especially in regards to sexual abuse which is usually perpetrated in private and in secrecy. An elderly Care Leaver was awarded compensation in 2012 for the sexual abuse committed against her by her foster father. She had little evidence, rather just her word, and a counsellors report. In 2013 another NSW Care Leaver submitted a claim for sexual abuse perpetrated on her when she was released from a Home as a teenager. This particular lady had state ward records, and medical records as well as psychologists and counsellors reports, but was denied any compensation as there was not enough evidence the act of violence took place according to the Victims of Crime Tribunal. This was the same Care Leaver who was told she should have disclosed her abuse earlier. In comparison to the other Care Leaver who received compensation she is younger, and disclosed her abuse in a shorter period of time than did her counterpart. Yet one received compensation whilst the other went without.

Similarly, in South Australia CLAN are aware of a case where there was immense inconsistency between biological siblings and a foster sister regarding their abuse in foster care. All three children were sexually abused by the foster father in this case, however one of them received \$50 000 in compensation where the foster sister and the biological brother only received \$10 000. The sibling that received the \$50 000 has even commented that his brother was the one who received the worst of the abuse, yet his claim was only deemed to be worth \$10 000.

Another problem with the various Victims of Crime Compensation Schemes is that they largely require individuals to do a lot of background work on their own behalf. Whilst some schemes provide some support to do this it is not comprehensive enough to ensure Care Leavers best interests. As you are already aware, many Care Leavers have limited education and some have literacy difficulties. This brings a lot of shame and embarrassment for many Care Leavers who need expert advice to fill out forms and to collect information for their claim. Without solicitors organising this and doing paperwork for them, it leaves many Care Leavers at a disadvantage as they may not be familiar with legalistic terminology or aware of certain downfalls of whatever they are signing or filling out. This also leaves a lot of support organisations such as CLAN to help Care Leavers fill out this sort of paperwork even though it is not our forte.

Due to Statutory Victims of Crime Schemes being state based, this once again allows for inconsistency and inequality across the states. Many Care Leavers were in care in multiple states, and Care Leavers were treated similarly regardless of which state provided their 'care'. It is unjust to penalise Care Leavers because they were born in one state instead of another.

It is for these reasons and the multiple disadvantages listed above that CLAN firmly believes the only way to ensure justice and redress for all is to implement a National Independent Redress Scheme. The federal government has a duty to ensure all Care Leavers are treated equally and justly across Australia, and it is up to them to coordinate an NIRS.

## **Features that are important for making statutory victims of crime compensation schemes effective for claimants**

One of the most important features of victims of crime schemes if they are to be effective for Care Leavers, is that they recognise historical crimes, as well as all types of child abuse, not just sexual. In recognising historical crimes it is important that those implementing the scheme understand the barriers historical crimes pose to claims, and the difficulties for groups such as Care Leavers to have evidence to support their claim, to report their crimes to the police and have offenders charged, as well as the difficulties in seeing doctors or psychologists to obtain reports.

Therefore another important aspect is that assessors and all those who work with Victims Services understand who Care Leavers are, as well as the special needs of all those who have been subject to childhood institutional abuse. If all those involved in the scheme have the necessary understanding of special needs groups like Care Leavers, the schemes should be able to be more consistent and fair in their judgments of cases.

It is also important that in victims of crime compensation schemes, psychological injury is acknowledged and understood. Instead of just basing compensation on the physical acts and injuries, it is important schemes take into account the psychological impact that violence can have, and how this differs from one person to the next. If psychological harm is truly recognised, then all victims of crime schemes should be able to place a higher value on ALL forms of child abuse and not just sexual assault. Many Care Leavers have reported to us that sometimes the physical and psychological abuse is more difficult to live with and can be more traumatic than the sexual abuse. Child abuse in any form can have lifelong impacts and many Care Leavers today still feel the shame and stigma associated with being raised in care. Furthermore, child abuse in any form contravenes Australia being a signatory to the UN Charter on the Rights of the Child.

CLAN would also like to see greater support be made available to those who pursue a claim through victims of crime schemes. All Care Leavers should receive mandatory assistance to fill out ALL forms and have anything they are signing explained to them in full. This will ensure all claimants are on a level playing field and no one group is disadvantaged because of the system. Similarly, we also believe ongoing counselling and casework support is necessary for Care Leavers going through this process to ensure the emotional and psychological wellbeing.

CLAN also recommends that this be a speedy process, completed in much shorter timeframes than we have seen in the past (up to seven years for some Care Leavers). This is a difficult process for Care Leavers to revisit their traumatic and painful memories, they should not have to be put through this for years on end.

Lastly, CLAN believes the most important feature for all Victims of Crime Compensation schemes across Australia, is that they promote equality and justice for ALL Care Leavers regardless of where that Care Leaver was raised. Thus it is of the utmost importance that all victims of crime schemes allow for the same rights and opportunities across Australia. As we understand these are state processes and bringing them in line with each other would be a difficult task, it is one of the reasons we recommend an NIRS be implemented, so as to avoid the injustice and inequality present in Statutory Victims of Crime Schemes.

### **Particular difficulties for those who suffered child abuse in Institutional contexts**

As stated previously in the disadvantages of Statutory Victims of Crime Schemes, these schemes create many difficulties for those abused in Institutional contexts. As most of the crimes we are speaking of are historical in nature, there are time limitations in all schemes which prevent Care Leavers either wholly, or partially accessing the schemes. Even though there are discretionary provisions to extend the time limitations, they are just that – discretionary. It is up to the subjective views and opinions of individuals who may not understand the unique circumstances and special needs of those who were in ‘care’ in institutions and consequently abused. As long as anything is ‘discretionary’, there will never be true equality and justice for ALL Care Leavers.

When considering the amounts of payments, and especially what historical crimes are awarded in some states, it is easy to see that they are not in line with amounts awarded in civil litigation. The recognition payments in victims of crime compensation schemes, do not truly reflect the pain, suffering or the injuries received from child abuse. As mentioned prior, the schemes seem more focused on reimbursing costs rather than truly compensating the individual as recognition for what they have been through. The sliding scale of payments that some schemes have, as well as the fact that some schemes do not look at offences before a certain date, severely limit some Care Leavers from truly achieving any opportunity for justice.

The other major difficulty also mentioned previously is the requirements of some schemes to report the crimes to the police, to have the offender charged, or to have a good explanation as to why these things haven’t been done. Most Care Leavers haven’t reported the crimes committed against them to the police, and many never will. For many Care Leavers it is not a possibility to have their perpetrator charged even if they know the identity and have reported it as many perpetrators have since died. Asking Care Leavers to explain why they haven’t gone to the police should be self-explanatory, but even when it has been explained to the tribunal the explanation has been rejected, or deemed not good enough. This system is devoid of any understanding of child abuse in institutional contexts and having these sorts of requirements discriminates against Care Leavers.

The amounts of compensation that most Care Leavers get from any source is paltry in comparison to many other cases decided in civil litigation. Care Leavers should not be required to pay anything back to anyone, and should not have any money taken out of their compensation either for things like medicare. If anything, the amount of compensation could be taken into account if they do receive a later payment from another source, or the Victims of Crime Scheme should seek to recover monies via the perpetrator or organisation representing the perpetrator. Whichever way it is organised, the amounts many Care Leavers receive are too small and inadequate for what they went through to justify them paying it back.

### **Changes which should be made to Statutory Victims of Crime Compensation Schemes**

First and foremost CLAN would like to see the introduction of a National Independent Redress Scheme (NIRS), instead of Care Leavers having to use options like Statutory Victims of Crime Schemes. Nevertheless if Statutory Victims of Crime Compensation Schemes are to be still utilised for Care Leavers, CLAN recommends the following changes:

- Time limitations should be abolished in all states for both sexual abuse and child abuse.
- Sexual abuse and child abuse should carry the maximum level of compensation payment.
- Compensation levels should not be decided on a sliding scale depending on the year the crime was committed in. Historical abuse needs to be recognised and taken as seriously as current crimes.
- Considering the nature of ALL types of institutional abuse committed against children, there should be no requirement to report the crimes to the police or for the perpetrator to be charged.
- As part of the NSW, VIC. And QLD system, loss of earning should be taken into account for child abuse victims. Many Care Leavers were deprived of an education and were physically, sexually, and psychologically abused, severely impairing many of their ability to work once they left care. For many, the ongoing brutal physical violence perpetrated on them has meant they have had to retire early as their bodies are now breaking down. All of these factors need to be taken into account for Care Leavers. Loss of earnings should not just be decided for adults who already have a job, but also for those whose potential was cut short because as a child they were used, abused, and tortured.
- CLAN also recommends that there be clearer and more transparent guidelines for assessors in making their decisions about individual cases so as to have a fairer and more consistent scheme.
- CLAN would like to see more individualised and focused assistance for Care Leavers and other victims of crime to go through the process. This should start right from the beginning when they are filling out all paperwork, to the end when they receive compensation.
- Long term counselling should be made available to all and Care Leavers should be given the choice of what counsellor they would like to use.
- Lastly, CLAN recommends that NO amount of money be taken from Care Leaver's compensation. This includes medicare, fees for reports etc that are incurred in preparing supporting documentation, and definitely not having to pay back compensation if they receive recompense from another source.

**What forms of redress, including services and payments should be offered through statutory victims of crime compensation schemes?**

- Monetary Compensation
- Counselling
- Casework including support with police if it is required, and support to access other services in a priority capacity as a victim of crime.

**Should those who suffer child abuse in Institutional contexts be eligible for additional or different compensation?**

The overwhelming answer to this question is yes. Care Leavers had their lives, wellbeing and childhood entrusted to the state and to the churches and charities who failed them miserably. For many Care Leavers, to end up in 'care' in the first place meant they came from a vulnerable background. They may have been impoverished, had a mother or father who died or became gravely ill, they may have been neglected, or abused in their own homes or by people they knew. Whichever



way they ended up coming into the 'care' system, they were part of a vulnerable population who were already suffering psychologically.

The welfare system was meant to assist these children and their families, provide them with the care that for one reason or another they could not get from their own families. Instead, they took these children in and provided them not only with substandard food and living conditions, but they abused and used these children in every which way, deprived them of an education and of medical attention also. For many children they were also deprived of natural rights such as that to an identity and to know their own family. The long term psychological damage which was endured by Care Leavers due to the negligent and purposeful actions and crimes by all past provider organisations is the reason Care Leavers should be entitled to additional and different compensation and services.

As a result, Care Leavers should receive increased amounts of compensation. Not just for the actual injuries they suffered (including physical, sexual, and psychological) but for breach in the duty of care that the institutions had to Care Leavers, and the state had to all children. Moreover for the breach in fiduciary duty, by both the state and the commonwealth who provided funding to institutions who did not provide the necessary care to children required by those funds. The long term psychological impact of a childhood in 'care' requires long term services for Care Leavers and their families. Therefore we also believe that Care Leavers and their immediate families be entitled to long term counselling through Victims of Crime Compensation Schemes, in comparison to other victim groups.

Overall, CLAN believes that the vast differences between Care Leavers and other victims of crime is enough to justify the introduction of an NIRS. With the great number of changes required to make the various statutory victims of crime schemes suitable for Care Leavers, the only logical response is to have a separate system for Care Leavers entirely.

#### **Appropriateness of the levels of verification of proof for claims by those who suffered child abuse in institutional contexts**

The majority of Care Leavers will be making claims for historical crimes. It is clear that the various statutory victims of crime schemes across Australia are not geared for historical crime. For many Care Leavers, they have little to no evidence that they can retrieve from their childhood. The very nature of these crimes meant that they are usually conducted in secrecy and privacy. Children in institutions had no one to complain to in many cases without being punished, and even if they did, these sorts of accusations were not routinely recorded. For many Care Leavers they are not even able to get their files or records from the Orphanages/Homes they were in, and some are also unable to get their state ward files. There are many excuses for this, including fires and floods, or for some people their files have just been destroyed.

Furthermore, since Care Leavers not only endured physical and sexual abuse in institutions but also severe psychological and emotional abuse, many leave 'care' feeling too embarrassed and ashamed to even mention that they were in 'care' in the first place, let alone that they were physically or sexually abused. This has meant that many Care Leavers take decades to disclose their abuse, and most have not reported their abuse to the police. Many Care Leavers had negative experience with the police as children and were not believed all those years ago, they fear they will still not be

believed today. There are also the practical problems even if they do report their abuse, many do not know their abusers name, or the perpetrator is now dead.

Another issue with the evidence required is the fear many Care Leavers have in seeing doctors, psychiatrists and psychologists. Many Care Leavers were subject to abuse by doctors in institutions also, referred to as state sanctioned rape. Many doctors at the time abused their position and conducted questionable internal examinations of Care Leavers. For many Care Leavers, these memories are still fresh in their mind and hold a lot of trauma, it can be extremely difficult to get them to see a doctor in adulthood. The same hesitance can be said for seeing psychiatrists and psychologists, especially when it was an Authorised Report Writer (ARW) who assessed them for a short amount of time, too short to build up rapport and trust with the Care Leaver.

Lastly, one of the biggest issues CLAN have found is the inconsistency between the evidence required by assessors when making their judgments. It seems to change from one case to another what evidence is required or is necessary. This must be addressed for all victims of crime.

### **CLAN's Recommendations**

1. A NIRS should be implemented for Care Leavers and contributions should be made by the Commonwealth and the respective state governments as well as ALL the churches charities and other past providers of Orphanages, Children's Homes, foster care and other institutions.
2. In the meantime changes to statutory victims of crime compensation schemes should be made to address the unique needs of Care Leavers.
3. Time limitations should be abolished in all states for both sexual abuse and child abuse.
4. Sexual abuse and child abuse should carry the maximum level of compensation payment.
5. Compensation levels should not be decided on a sliding scale depending on the year the crime was committed in. Historical abuse needs to be recognised and taken as seriously as current crimes.
6. Considering the nature of ALL types of institutional abuse committed against children, there should be no requirement to report the crimes to the police or for the perpetrator to be charged.
7. As part of the NSW, VIC. And QLD system, loss of earning should be taken into account for child abuse victims.

8. CLAN also recommends that there be clearer and more transparent guidelines for assessors in making their decisions about individual cases so as to have a fairer and more consistent scheme.
9. CLAN would like to see more individualised and focused assistance for Care Leavers and other victims of crime to go through the process. This should start right from the beginning when they are filling out all paperwork, to the end when they receive compensation.
10. Long term counselling should be made available to all and Care Leavers should be given the choice of what counsellor they would like to use.
11. That individuals employed to administer either a NIRS or various Victims of Crime Compensation schemes should have NO affiliation with past providers of 'care' and be trained to deal with the issues of Care Leavers. Employees should understand the history and experience of Care Leavers as well as to read important documents such as the 2004 Senate Inquiry Report, and Orphans of the Living by Dr Joanna Penglase. CLAN also believe that employees should undertake cultural awareness training in relation to Care Leavers so that these workers are capable of showing appropriate sensitivity and respect.
12. Lastly, CLAN recommends that NO amount of money be taken from Care Leaver's compensation. This includes Medicare, fees for reports etc. that are incurred in preparing supporting documentation, and definitely not having to pay back compensation if they receive recompense from another source.